to commit was withdrawn after the husband gave his undertaking, but to the order which incorporated the undertaking of the husband. The subsistence of the original injunction was not in issue at all. In my view, it does not follow that because the wife elected to commit the husband for breach of the undertaking that she would not have been able to commit him for breach of the injunction if she had so elected. Neill L. J. in his judgment commented on the practice that should be followed in committal proceedings where an undertaking had been given in lieu of an injunction. His Lordship could have been referring to a hypothetical situation. If he had in mind the case before him, then we must assume that in that case the husband's undertaking was given in lieu of the original injunction.

In the present case, the undertaking given by the respondent was not given in lieu of the order of court but in lieu of the applicants agreeing to withdraw their application for committal. To my mind, the learned judge, in not committing the respondent and accepting his undertaking, was merely giving him another opportunity to abide by the order of court. The order of court remained in force and nothing that had happened up to then had diminished or affected its operation.

Counsel for the respondent submitted that the undertaking and the order of court could not subsist side by side on the ground that if the respondent had complied with the order of court, he might still be liable for breach of his undertaking. This is not a valid argument for two reasons. Firstly, this contingency could not happen in the present case because compliance with the order of court would automatically result in compliance with the undertaking and *vice versa*. Secondly, there is no reason why in principle a party may not be committed for contempt of court for breach of a court order as well as an undertaking given in respect thereof. He can still be guilty of two acts of contempt in respect of the same matter but no court is likely to punish the contemnor twice in respect of the same matter.

Accordingly, I hold that the preliminary objection is misconceived. I will now hear submissions on the merits of the application to commit.

Order accordingly.

Solicitors: *Arthur Loke & Partners; N. S. Kang.*

MARITIME (PTE.) LTD. v. ETPM S.A.

[A.C.J. (Thean J.) 29 March 1988]

[Singapore – Admiralty in Personam No. 346 of 1986]

Shipping – Claim for costs of repairs – Service of writ made without obtaining leave of court – Service made within limitation period – Service irregular – Whether irregularity should be cured – Whether alternative course should be adopted – R.S.C. 1970, O. 10 r. 2.

Civil Procedure – Service of writ – Made without obtaining leave of court – Service made within limitation period – Service irregular – Whether irregularity should be cured – Whether alternative course should be adopted – R.S.C. 1970, O. 10 r. 2.

The plaintiffs instituted an action against the defendants claiming a certain sum of money. The writ was taken out on 8 July 1986, a few days before the period of limitation set in, and was served on an agent of the defendants in Singapore. The defendants were outside the jurisdiction of the court and no leave was obtained under Order 10 rule 2 of the Rules of the Supreme Court for service of the writ on the defendants' agent in Singapore. A conditional appearance was entered by the defendants without prejudice to their application to apply to court to set aside the service.

On 8 June 1987, the defendants applied for an order to set aside the writ of summons and/or set aside the service of the writ. On 10 June 1987, the plaintiffs applied for, *inter alia*, an order that the plaintiffs' service of the writ on the defendants' agent be deemed good service on the defendants or, alternatively, an order that the said service be set aside and the service of the writ and a copy of the order be effected by serving the same on the defendants' agent in Singapore and that such service be deemed good and sufficient service.

Both applications were heard together before the learned Assistant Registrar. The learned Assistant Registrar exercised his discretion and cured the irregularity by validating the service of the writ on the defendants' agent. He dismissed the defendants' application. The defendants appealed.

Held, dismissing the appeal: the learned Assistant Registrar had properly exercised his discretion and was justified in the circumstances in making the orders which he made.

Case referred to:

(1) *Leal* v. *Dunlop Bio-Processes International Ltd.* [1984] 2 All E.R. 207 (distd).

APPEAL AGAINST REGISTRAR'S DECISION.

Steven Chong for the plaintiffs.

Laurence Boo for the defendants.

Cur. Adv. Vult.

Thean J.: The plaintiffs instituted this action against the defendants claiming for a sum of $250,225.68, being the balance of the costs of repair of the plaintiffs' barge, "Seaborn Mariner", which was alleged to have been damaged during the period between 16 and 23 July 1980 while the barge was on a bareboat charter by demise to the defendants. The writ was taken out on 8 July 1986, a few days before the period of limitation set in, and was served on E.T.P.M. Far East Pte. Ltd. ("ETPM") as agent for the defendant on 19 May 1987. The defendants were, and still are, outside the jurisdiction of the court and no leave was obtained under Order 10 rule 2 of the Rules of Supreme Court for service of the writ on the defendants' agent in Singapore. A conditional appearance was entered by the defendants without prejudice to their application to apply to court to set aside the service.

On 8 June 1987, the defendants by summons-in-chambers entered No. 4019 of 1987, applied for an order to set aside the writ of summons and/or to set aside the service of the writ. Two days later, on 10 June 1987, the plaintiffs by summons-in-chambers entered No. 4066 of 1987, applied for, *inter alia,* an order that the plaintiffs' service of the writ on the defendants' agent be deemed to be good service on the defendants, or alternatively, an order that the said service be set aside and the service of the writ and a copy of the order be effected by serving the same on the defendants' agent or manager, namely, ETPM, at its registered office at 111 North Bridge Road, #12-01, Peninsular Plaza, Singapore 0617 and that such service be deemed good and sufficient service of the writ on the defendants. Both applications were heard together by the learned Assistant Registrar. It was common ground before the learned Assistant Registrar that as the service of the writ on the defendants' agent was effected without leave of the court, that service was bad and an irregularity; but it was argued on behalf of the plaintiffs that in the circumstances of the case the court ought to exercise its discretion to cure the irregularity and validate the service which was made. This argument prevailed and the learned Assistant Registrar exercised his discretion and cured the irregularity by validating the service of the writ on the defendants' agent, *i.e.* the service of the writ on the defendants' agent, EPTM, on 19 May 1987 be deemed good service on the defendants. He dismissed the defendants' application but awarded to the defendants costs, which he fixed at $250. Against that decision, the defendants appealed, and at the conclusion of the hearing I dismissed it with costs.

In my opinion, the learned Assistant Registrar had properly exercised his discretion and was justified in the circumstances in making the orders which he made. Before him, the application of the plaintiffs was for, *inter alia,* an order validating the service of the writ on the defendants' agent, or alternatively for an order that the said service of the writ be set aside and the writ be served on the defendants' agent or manager, ETPM, at its registered office in Singapore. As I see it, the alternative order sought for was in effect for leave to serve the writ on the defendants' agent under Order 10 rule 2. The learned Assistant Registrar could have made an order setting aside the service and giving leave to the plaintiffs under Order 10 rule 2 to serve the writ on the defendants' agent in Singapore; but as he said, he saw no purpose for so doing, and in exercising his discretion under Order 2 rule 1 he cured the irregularity and ordered that the plaintiffs' service of the writ on the defendants' agent on 19 May 1987 be deemed good service on the defendants.

Order 10 rule 2 provides as follows:

> "2.(1) Where the court is satisfied on an *ex parte* application that:
>
> (a) an action relates to any business or work against a person who does not reside within Singapore or who is absent from Singapore; and
>
> (b) an agent or manager has, at the time of service, personally the control or management of such business or work for such person within Singapore; and
>
> (c) at the time of the application either the agent's or manager's authority has not been determined, or he is still in business relations with the principal,
>
> the court may authorize service of a writ of summons to be effected on such agent or manager instead of the principal.
>
> (2) For the purpose of this rule, the agent of a ship shall be deemed to be the agent of the owner and charterer of the ship.
>
> (3) For the purpose of this rule, the words 'business or work' shall include the administration of an estate.
>
> (4) Nothing in this rule shall invalidate or affect any other mode of service in force at the time this rule comes into operation.
>
> (5) Every application under this rule must be supported by an affidavit stating:
>
> (a) the nature of the claim; and
>
> (b) the reasons why service out of the jurisdiction under Order 11 cannot conveniently be effected.

(6) An order under this rule authorizing service of a writ on a defendant's agent or manager must limit a time within which the defendant must enter an appearance.

(7) Where an order is made under this rule authorizing service of a writ on a defendant's agent or manager, a copy of the order and of the writ must be sent by prepaid registered post to the defendant at his address out of the jurisdiction."

It was contended on behalf of the defendants that the plaintiffs had not satisfied the conditions laid down in paragraphs (a), (b) and (c) of sub-rule (1). That argument I rejected. On the material before him, the learned Assistant Registrar would be entitled to make an order under this sub-rule, giving leave to the plaintiffs to serve the writ on the defendants' agent, ETPM, in Singapore. In her affidavit, affirmed on 10 June 1987, Pauline Lee Mui Gek, a director of the plaintiffs, said that ETPM was the agent or manager of the defendants within the jurisdiction of the court, that it had the control and management of the defendants' business in Singapore and that ETPM still acted for the defendants and its authority had not been determined. These statements were not denied or challenged by the defendants at all. It is significant that the bareboat charter dated 14 June 1980 was signed by ETPM on behalf of the defendants and according to a search made at the Registry of Companies the majority of the shares in ETPM was owned or held by the defendants. At the hearing before me, Pauline Lee filed a further affidavit, affirmed on 5 November 1987, stating that Singapore does not have a consular office at Levallois-Perret Cedex, France, the place where the defendants have their registered address, and that that place is outside Paris.

Counsel for the defendants relied mainly on the case of *Leal* v. *Dunlop Bio-Processes International Ltd.*[1] There, the plaintiffs, just within the period of limitation, without leave of the court, issued a writ claiming damages for negligence against the defendants, whose registered office was outside the jurisdiction of the court. Just before the expiry of the validity of the writ but after the expiry of the limitation period, the plaintiffs' solicitors purported to serve the writ on the defendants out of jurisdiction without first obtaining leave of the court pursuant to Order 11 rule 1 of the Rules of Supreme Court in England. The defendants then applied under Order 12 rule 8 to set aside the service by reason of the irregularity caused by the failure to obtain the court's leave and also applied to dismiss the action on the ground of failure to obtain the court's leave to serve the writ out of jurisdiction. The plaintiffs cross-applied for an order under Order 6 rule 8(2) for the renewal of the writ and for leave under Order 11 rule 1 to serve the renewed writ out of the jurisdiction. The Registrar, who heard the applications, dismissed the defendants' application and in effect gave the plaintiffs leave retroactively to serve the original writ out of the jurisdiction. On appeal, Neill J. held that although the service of the writ out of the jurisdiction without the court's leave was not a nullity but merely an irregularity in service, it would be a wrong exercise of his discretion under Order 2 rule 1 to rectify the irregularity. He therefore set aside the service and refused the plaintiffs' application for an extension of the validity of the writ and for leave to serve the writ out of the jurisdiction on the ground that to grant that application would infringe the general rule that the validity of a writ ought not to be extended, if to do so would deprive a defendant of a defence under a statute of limitation unless there were exceptional circumstances and there were none in that case. On appeal, the Court of Appeal affirmed the decision of Neill J.

The ratio of the decision of the Court of Appeal is that the failure to obtain leave of the court to serve the writ on the defendants outside the jurisdiction of the court was an irregularity and that the court has the power under Order 2 rule 1 to cure the irregularity and make good the service of the writ, but that in the circumstances of the case it would be a wrong exercise of discretion to grant to the plaintiffs retroactively leave to serve the writ out of the jurisdiction or to extend the validity of the writ. As in the *Leal* case, there was in this case an irregularity in the service of the writ and the court has the power under Order 2 rule 1 to cure the irregularity by giving leave retroactively to serve it on the defendants' agent. The only question was whether that discretion should be exercised in the plaintiffs' favour. I came to the conclusion that in the circumstances the discretion should be so exercised and agreed with the learned Assistant Registrar entirely. The facts in this case are distinguishable from the *Leal* case. At the time of the application before the learned Assistant Registrar, the period of the validity of the writ had not expired and the learned Assistant Registrar could, on the material before him, grant an order for leave to serve the writ on the defendants' agent in Singapore. If such an order were made at the time, service could and would have been effected within the period of the validity of the writ. Instead of proceeding by this circuitous route, the learned Assistant Registrar in

exercise of his discretion cured the irregularity and validated the service. There was no question of an extension of the validity of the writ which would deprive the defendants of the defence of limitation. The writ was taken out within the period of the validity of the writ. This clearly is the significant difference between the instant case and *Leal's* case.

In the result, the appeal failed, and I so held.

Appeal dismissed.

Solicitors: *Drew & Napier; Haridass Ho & Partners.*

BRUNEI REPORTS

HJ. MANAN BIN HJ. MD. RAIS v. LOO KOK KIONG & ORS.

[A.C.J. (Mayo J.) 13 April 1988]

[Bandar Seri Begawan – Suit No. 229 of 1987]

Tort – Negligence – Road accident – Finance company – Whether can be sued – Road Traffic Act (Cap. 68), ss. 2 & 86.

In this road accident case, the plaintiff claimed damages against the first defendant, the driver of one of the vehicles involved, the second defendant, the owner thereof under a hire-purchase agreement, and the third defendant, the finance company.

The issue in this case was whether the plaintiff can sue the third defendant, the finance company, under section 86 of the Road Traffic Act (Cap. 68).

Held: (1) section 2 of the Road Traffic Act specifically excludes finance companies from the definition of ownership and there is nothing in section 86 which persuaded the court that it was the intention of the legislature to include finance companies, that is, to include finance companies within the purview of section 86;

(2) section 86 does not extend to finance companies such as the third defendant and it was not even arguable that this is the case.

APPEAL AGAINST REGISTRAR'S DECISION.

Andrew Ong for the plaintiff.

Ronnie Lee for the third defendant.

Cur. Adv. Vult.

Mayo J.: This is an appeal against the order of Registrar Swed. It is a strike out application. The plaintiff, who was seriously injured in a traffic accident, has sued the first defendant, the driver of one of the vehicles involved, the second defendant, the owner thereof under a hire-purchase agreement, and the third defendant, the finance company.

Mr. Lee for the third defendant submits that there is no cause of action against his client or alternatively that such cause is frivolous, vexatious and an abuse of the process of the court.

The plaintiff's claim against the third defendant is based upon the provisions contained in section 86 of the Road Traffic Act (Cap. 68). This provides:

"In addition to any liability imposed by the common law upon the owner of a motor vehicle for any injury or damage that may be caused by, or by reason of the use of,